OLR RESEARCH REPORT

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COMMITMENT FOR SUBSTANCE ABUSE DISORDERS

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You asked about the process in Connecticut for commitment of individuals with a substance abuse disorder (e.g., a drug addiction).

SUMMARY

The law provides for both involuntary and voluntary commitment for people suffering from alcohol or drug abuse. This report focuses on involuntary commitment. Patients may receive treatment at facilities operated by the Department of Mental Health and Addiction Services (DMHAS) or at private facilities licensed by the Department of Public Health.

The law allows a probate court to involuntarily commit for inpatient treatment an alcohol- or drug-dependent person who is (1) dangerous to himself, herself, or others when intoxicated or (2) gravely disabled (CGS § 17a-685). The commitment application must be supported by the certification of a physician who has examined the person within the previous two days.

The court must hold a hearing on the application within seven business days. At the hearing, the alleged alcohol- or drug-dependent person for whom the petition is filed ("respondent") has various procedural rights. For example, the person has the right to (1) be present, unless that would be injurious to him or her, in which case a guardian ad litem must be appointed; (2) counsel, and to have counsel

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provided if indigent; and (3) present evidence and cross-examine witnesses.

If the court finds by clear and convincing evidence that the application's allegations have been met, the court must order the person committed for inpatient treatment for between 30 and 180 days. The person can be discharged before then if (1) he or she no longer needs treatment or (2) the treatment is not working or appropriate.

At the end of the commitment period, the person is discharged automatically unless the facility administrator obtains a court order for recommitment. Upon discharge, the administrator must refer the person to outpatient treatment if the facility's medical officer recommends it. Someone can also be recommitted following outpatient treatment if the person is not successfully participating in the outpatient program.

If the administrator applies for the person to be recommitted for further inpatient treatment, the court must hold a hearing, and the same procedural protections apply. Recommitments can be for 30 to 180-day periods. The law places limits on subsequent recommitment orders.

A committed person, or other responsible party on that person's behalf, can apply to court to terminate the commitment. The court must hold a hearing, at which the same procedural protections apply.

In addition to commitment, the law provides for someone to be taken into protective custody for alcohol abuse or given emergency treatment for substance abuse. The law requires the police, upon finding someone who appears to be incapacitated by alcohol, to take the person into protective custody and brought to a treatment facility that provides medical triage in accordance with regulations. Such a taking into protective custody is not an arrest.

After someone is taken into protective custody and brought to a treatment facility, the medical officer must determine whether the person requires inpatient treatment. If yes, the person must be (1) admitted to, referred to, or detained at a treatment facility or hospital (the person can be detained for treatment if he or she does not consent) or (2) committed to a DMHAS-operated facility for emergency treatment. Anyone admitted or detained under (1) above must be released once he or she is no longer incapacitated by alcohol or within 48 hours, whichever is shorter, unless the person consents to further evaluation or treatment (CGS § 17a-683).

A person's physician, spouse, guardian, or other relative or responsible person can also apply for someone to receive emergency

treatment. The person (1) must be a danger to himself, herself, or others or incapacitated by alcohol or (2) need medical treatment for detoxification for potentially life threatening withdrawal symptoms from alcohol or drugs. The application must be supported by the certification of a physician who has examined the person within the previous two days. If the administrator approves the commitment, the person can generally be detained for up to five days (CGS § 17a-684).

Below, we describe in detail the process for involuntary commitment for substance abuse. If you would like more information on the process for voluntary commitment, protective custody, or emergency treatment, please let us know.

The law also addresses other matters related to substance abuse commitments, such as the confidentiality of treatment records (CGS § 17a-688) and criminal penalties for certain lies related to treatment (e.g., lying in a petition for someone's commitment or fraudulently applying to a treatment program) (CGS § 17a-689). This report does not discuss these matters; please let us know if you would like information on these topics.

INVOLUNTARY COMMITMENT FOR SUBSTANCE ABUSE

Application

Who May Apply and Where To Apply. Any person, including the spouse, a relative or a conservator of a person sought to be committed, a certifying physician (see below) or a treatment facility administrator, can apply to the probate court to commit a person to an inpatient treatment facility due to alcohol or drug dependency.

The application must be made in the probate district where the respondent resides, or, if the residence is out of state or unknown, in the district where he or she is when the application is filed. If the person is being treated in a facility when the application is filed, the probate district where the facility is located has jurisdiction. If someone is confined to a facility, the probate judge must hold the hearing on the application at that facility (CGS § 17a-685(a)).

Contents; Physician's Certificate. The application must allege that the person is an alcohol- or drug-dependent person who is (1) dangerous to himself, herself, or others when he or she is an intoxicated person (meaning there is a substantial risk that the person will inflict physical harm) or (2) gravely disabled.

For this purpose, "gravely disabled" means a condition in which a person, as a result of the periodic or continuous use of alcohol or drugs, is in danger of serious physical harm because the person:

1. is not providing for his or her essential needs such as food, clothing, shelter, vital medical care, or safety;

2. needs, but is not receiving, inpatient treatment for alcohol dependency or drug dependency; and

3. is incapable of determining whether to accept such treatment because his or her judgment is impaired.

The application must state that the applicant has arranged for treatment in a treatment facility; a statement to that effect from the facility must also be attached to the application.

At or before the required hearing, the applicant must also file with the court a certificate from a licensed physician who has examined the person within two days before the application was submitted. If the person is to be committed to a private facility, the certifying physician cannot be employed by that facility.

The physician's certificate must include:

1. his or her findings supporting the application, including clinical observation or information or the person's medical history;

2. a finding of whether the person presently needs and is likely to benefit from treatment; and

3. a recommendation about the type and length of treatment and inpatient facilities available for that treatment.

If someone other than a certifying physician submits the application, the application must set forth (1) the facts and information upon which the allegations are based and (2) the names and addresses of all physicians.

After an application for involuntary commitment is filed, the court can issue an order for the disclosure of any required medical information as set forth above (CGS § 17a-685(b)).

Hearing Date and Notice

After receiving the application, the court must schedule a hearing, which must occur within seven business days after the application was filed. A copy of the application, the physician's certificate, and the hearing notice must be served on the respondent by a state marshal, constable, or indifferent person not later than three business days before the hearing, unless the respondent is in a facility; in that case, the notice is sent by regular mail.

The notice must inform the respondent that he or she has the right:

1. to be present at the hearing,

2. to counsel and, if indigent, to have counsel appointed to represent him or her (see below), and

3. to cross-examine any testifying witnesses.

The court must also cause notice of the hearing to be sent by regular mail to:

1. the respondent's next of kin;

2. the respondent's parent or legal guardian, if the respondent is a minor;

3. the administrator of the treatment facility, if the respondent has been committed for emergency treatment; and

4. the administrator of the treatment facility to which the respondent is to be admitted.

The court can also order the notice to be sent to other people having an interest in the respondent (CGS § 17a-685(c)).

Counsel

If the court finds the respondent cannot pay for counsel, it must appoint one, unless the person refuses counsel and the court finds that the respondent understands the nature of that refusal. The court must appoint counsel from a panel of attorneys admitted to practice in the state provided by the probate court administrator in accordance with regulations the administrator promulgates (CGS § 17a-685(c)).

Access to Records

Before the hearing, the respondent or his or her counsel, in accordance with the law's provisions on patient-psychiatrist privileged communications, must be (1) given access to all records, including hospital records if the respondent is hospitalized, and (2) allowed to take notes from the records. If the respondent is hospitalized, the hospital must make available at the hearing for use by the respondent or counsel all records in its possession relating to the respondent's condition. Notwithstanding the law's provisions concerning patient-psychiatrist privileged communications, all hospital records directly relating to the respondent are admissible at the request of any party or the probate court in any proceeding relating to the confinement to or release from a hospital or treatment facility. But a party can object to the admissibility of evidence in accordance with the rules of civil procedure (CGS § 17a-685(c)).

Recording and Transcripts

The hearing testimony must be recorded. The recording must be transcribed only if there is an appeal and a copy of the transcript must be provided, without charge, to any appealing party whom the probate court finds is unable to pay for it. In that case, the Judicial Department pays for the transcript copy (CGS § 17a-685(c)).

Commitment Order

If, after hearing all relevant evidence, including the results of any diagnostic examination, the court finds by clear and convincing evidence that the respondent is an alcohol- or drug-dependent person who is (1) dangerous to himself, herself, or others when an intoxicated person or (2) gravely disabled, the court must order the person to be committed for inpatient treatment for at least 30 but no more than 180 days. The court may not order commitment unless it determines that the treatment facility is able to provide adequate and appropriate treatment for the respondent and that the treatment is likely to be beneficial (CGS § 17a-685(d)).

In any proceeding considering such a commitment, the person has various procedural rights, explained below.

Procedural Rights

The person must be informed of the right to be examined by a licensed physician of his or her choice. If the person is unable to obtain a

licensed physician and requests a physician's examination, the court must employ a licensed physician.

At any hearing on an application for commitment, recommitment, or termination and discharge (see below), the court must inquire into the facts of the application. At the hearing:

1. the respondent must be present, unless the court finds by clear and convincing evidence that being present would be injurious to the person. If the person is not present, the court must appoint a guardian ad litem to represent him or her;

2. the court must examine the person in open court, or, if the person is not present, in a private setting as the court determines;

3. the respondent or his or her representative may present evidence and cross-examine witnesses;

4. the court must order any examining physician to appear if the person notifies the court not less than two days before the hearing that he or she wishes to cross-examine the physician. The applicant has the responsibility to provide medical testimony; and

5. the Connecticut rules of evidence must be observed.

If, at the time of the hearing, the person is being treated at a facility and is medicated, the treatment facility must notify the court of the medication and of its common effects.

The court may not order a commitment or recommitment unless the evidence presented includes the report of at least one licensed physician who has examined the person which supports the application's allegations.

If a private treatment facility agrees with the request of a patient or his or her parent, sibling, adult child, or legal representative to accept the patient for treatment, the administrator of the DMHAS facility treating the patient must transfer the patient to the private facility.

In any contested proceeding for commitment, recommitment, or termination and discharge, the Attorney General must, upon request, represent the administrator of a DMHAS-operated treatment facility (CGS § 17a-686).

Expiration of Commitment Period

When someone is committed under these provisions, the person remains in the treatment facility's custody for the commitment period unless discharged before then, as explained below.

At the end of the commitment period, the person must be discharged automatically unless the facility administrator, before the commitment period expires, obtains a court order for recommitment (see below). When the person is discharged, the administrator must refer the person to an outpatient treatment facility, if the facility's medical officer recommends such treatment (CGS § 17a-685(e)).

Recommitment

Before someone's commitment period expires (either inpatient or outpatient, as explained below), the facility administrator, on the advice of the facility's medical officer, may apply to court for the person to be recommitted for inpatient treatment. The application must allege that the respondent is an alcohol- or drug-dependent person who needs further inpatient treatment and is likely to benefit from that treatment, and, if the respondent is in an outpatient facility, that the respondent is not successfully participating in the outpatient program (CGS § 17a-685(f)).

Recommitment Hearing Date and Notice. Upon receiving an application for recommitment, the court must schedule a hearing, to be held within 10 business days. The applicant must be notified of the hearing date not later than three business days before the hearing.

A copy of the application and of the hearing notice must be sent by regular mail, at least seven days before the hearing, to (1) the respondent; (2) the respondent's next of kin; (3) the original applicant for commitment, if different from the applicant for recommitment; (4) the respondent's parents or legal guardian, if the respondent is a minor; (5) the administrator of the treatment facility to which the respondent is admitted or to be admitted; and (6) any other person the court believes advisable (CGS § 17a-685(g)).

Recommitment Order. The court must order someone recommitted to an inpatient treatment facility for a 30- to 180-day a period if, after hearing all relevant evidence, including the results of any diagnostic examination, the court finds by clear and convincing evidence that the respondent is an alcohol- or drug-dependent person who (1) needs further inpatient treatment and (2) is likely to benefit from it. If the

respondent is in an outpatient treatment facility, the court must find that the respondent is not successfully participating in that program.

The court may not order recommitment unless it determines that the treatment facility is able to provide adequate and appropriate treatment for the respondent and the treatment is likely to benefit him or her.

The law limits the court from making more than one recommitment order (1) immediately following an original commitment order or (2) from an outpatient treatment facility. In any such proceeding, the procedural protections explained above apply (CGS § 17a-685(h)).

Expiration of Recommitment Period. A person who has been recommitted as set forth above, and who has not been discharged before the end of the recommitment period, must be discharged automatically at the expiration of that period. Upon discharge, the facility administrator, if advised to do so by the facility medical officer, must refer the person to an outpatient treatment facility (CGS § 17a-685(i)).

Outpatient Treatment After Commitment

A person referred to an outpatient treatment facility after a commitment or recommitment period must remain in outpatient treatment for a year, unless (1) the facility administrator, on the medical officer's advice, discharges the person before then or (2) the administrator obtains a court order of recommitment for inpatient treatment as provided above (CGS § 17a-685(j)).

Discharge before Expiration of Commitment Period

A treatment facility administrator, on the medical officer's advice, must discharge a person committed or recommitted for treatment at any time before the end of the commitment period if (1) the person is no longer an alcohol- or drug-dependent person in need of further treatment, (2) further treatment is unlikely to significantly improve the person's condition, or (3) treatment is no longer adequate or appropriate (CGS § 17a-685(k)).

Application to Terminate Commitment

If a committed or recommitted person has not been discharged, any responsible person, including the committed or recommitted person, can apply to the probate court to terminate the commitment and discharge the person from the facility. The application must allege that the person meets the discharge standards set forth above.

Upon receiving such an application, the court must schedule a hearing to be held within 10 business days. The court must give reasonable notice of the hearing to the applicant, facility administrator, and any other person the court deems advisable. The notice must inform the applicant that he or she has the right to:

1. be present and present evidence at the hearing,

2. counsel and, if indigent, to have counsel appointed to represent him or her, and

3. cross-examine any testifying witnesses.

The procedural protections set forth above apply at such a hearing.

If, after the hearing, the court determines that the alleged grounds for discharge exist, the court must order the commitment or recommitment to be terminated and the person discharged. However, the court cannot order a discharge if it determines the person is likely to become dangerous to himself or herself or dangerous to others when intoxicated (CGS § 17a-685(l)).

Habeas Corpus. Anyone confined in a hospital or inpatient treatment facility for treatment of alcohol or drug dependency, or a relative, friend, or interested person on the confined person's behalf, can also challenge the legality of the confinement by applying to Superior Court for a writ of habeas corpus. The law sets certain requirements for such applications, such as specifying that court fees may not be charged against the superintendent or director of the hospital or the judge (CGS § 17a-686a).

Temporary Leave from Facility

A facility administrator may, under such restrictions or agreements as the administrator deems advisable and on the medical officer's advice, allow a committed or recommitted person to leave the treatment facility temporarily, in the charge of such person's guardian, conservator, relatives or friends, or by himself or herself (CGS § 17a-685(m)).

Expenses

The expenses in connection with applications for involuntary commitments or emergency treatment for substance abuse must be paid by the applicant, unless the applicant is indigent. In that case, DMHAS

must pay, in accordance with rates it sets. The Judicial Department must set rates for appointed counsel, and pay for such counsel, unless there are no funds for such fees in its budget. In that case, the compensation must be set by the probate court administrator, and paid from the Probate Court Administration Fund (CGS §§ 17a-685(c), (n)).

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